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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/738,344

12/17/2003

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9697

7590

05/23/2006

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EXAMINER

ZIMMERMAN, JOHN J

ART UNIT

PAPER NUMBER

1775

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/738,344

Applicant(s)

MORALES ET AL.

Examiner

John J. Zimmerman

Art Unit

1775

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1, 2, 4-14, 16 and 17.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No.(s): _____.
13. ☐ Other: _____.

John J. Zimmerman
Primary Examiner
Art Unit: 1775

Continuation of 3. NOTE: The proposed amendment raises new issues that would require further consideration and/or search. The effect of the proposed limitation that the "metal foam precursor is adapted to release a blowing agent gas from within said metal foam precursor to an ambient environment" is a new issue whose introduction is not appropriate at this stage of prosecution. In addition, although applicant cites paragraphs [0016]-[0018] of the specification as support for this proposed amendment, it is not clear where release of the gas to an ambient environment is described nor is it clear how the precursor is to be "adapted" within the context of claim interpretation. In view of these new issues, entry of the proposed amendments would create new issues which have not been developed in this prosecution. Since the proposed amendments would not reduce or simplify the issues in this prosecution and the introduction of new issues is not appropriate at this late stage of prosecution, the proposed amendments will not be entered.

Continuation of 11. does not place the application in condition for allowance because: In view of the non-entry of the proposed amendments, applicant's arguments are not commensurate with the pending claim limitations. Regarding the obviousness-type double patenting rejection, applicant indicates that a terminal disclaimer will be filed once the application is in "condition for allowance". The pending application cannot be indicated as in "condition for allowance", however, as long as rejections (including the obviousness-type double patenting rejection) are unresolved. In addition, applicant argues that the quick plastic forming process of Rashid is highly dependent on materials selected, air flow across the metal sheet, pressure applied to the metal sheet, and other processing variables. The examiner notes, however, that quick plastic forming processes are well known and understood by those skilled in art. Evidence of the level of skill in the quick plastic forming art is that applicant's own disclosure is assumed enabling for quick plastic forming while disclosing very limited information (if any) on material selection, airflow across the metal sheet, pressure applied to the metal sheet and other processing variables. Therefore it must be assumed that these selections and variables are within the purview of the skilled metallurgist. Regarding the rejection applying Seeliger, applicant argues that Baumeister's process is incompatible with Seeliger's process. The examiner notes, however, that Baumeister was only applied to show various mixes of blowing agents and metal powders used in the art. There is no indication in the rejection that Baumeister's process should be incorporated into Seeliger.